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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Shayne Smith,

Plaintiff,

No.

VS.

VERIFIED COMPLAINT

Barton Dynamics, L.L.C., an Arizona limited liability company; and **James A. Barton and Jane Doe Barton**, a married couple,

Defendants.

Plaintiff, Shayne Smith (“Plaintiff” or “Shayne Smith”), sues the Defendants, Barton Dynamics, L.L.C., and James A. Barton and Jane Doe Barton (collectively, “Defendants”) and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid minimum wages, liquidated damages, attorneys' fees, costs, and interest under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.; unpaid minimum wage under the Arizona Minimum Wage Act ("AMWA"), Arizona Revised Statutes ("A.R.S.") Title 23, Chapter 2, Article 8; and

1 unpaid wages under the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 2, Article
2 7.

3 2. The FLSA was enacted “to protect all covered workers from substandard
4 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
5 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
6 minimum wage of pay for all time spent working during their regular 40-hour
7 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-
8 exempt employees an overtime premium for all time spent working in excess of 40 hours
9 in a given workweek. See 29 U.S.C. § 207(a).

10 3. The AMWA, A.R.S § 23-363, et seq., establishes a minimum wage within
11 the State of Arizona.

12 4. The AWA, A.R.S. § 23-350, et seq., establishes standards for wage
13 payments to employees within the State of Arizona.

14 **JURISDICTION AND VENUE**

15 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
16 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
17 the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §
18 1367 because the state law claims asserted herein are so related to claims in this action
19 over which this Court has subject matter jurisdiction that they form part of the same case
20 or controversy under Article III of the United States Constitution.

21 6. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(ii) because
22 acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and

1 Defendants regularly conduct business in and have engaged in the wrongful conduct
2 alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.

3 **PARTIES**

4 7. At all times material to the matters alleged in this Complaint, Plaintiff was
5 an individual residing in Maricopa County, Arizona, and is a former employee of
6 Defendants.

7 8. At all material times, Barton Dynamics, L.L.C. is a limited liability
8 company duly licensed to transact business in the State of Arizona. At all material times,
9 Defendant Barton Dynamics, L.L.C. does business, has offices, and/or maintains agents
10 for the transaction of its customary business in Maricopa County, Arizona.

11 9. At all relevant times, Defendant Barton Dynamics, L.L.C. owned and
12 operated as “Big AZ Tents & Events,” a party equipment rental service located in
13 Phoenix, AZ.

14 10. Under the FLSA, Defendant Barton Dynamics, L.L.C. is an employer. The
15 FLSA defines “employer” as any person who acts directly or indirectly in the interest of
16 an employer in relation to an employee. At all relevant times, Barton Dynamics, L.L.C.
17 had the authority to hire and fire employees, supervised and controlled work schedules or
18 the conditions of employment, determined the rate and method of payment, and
19 maintained employment records in connection with Plaintiff’s employment with
20 Defendants. As a person who acted in the interest of Defendants in relation to the
21 company’s employees, Defendant Barton Dynamics, L.L.C. is subject to liability under
22 the FLSA.

1 11. Defendants James A. Barton and Jane Doe Barton are, upon information
2 and belief, husband and wife. They have caused events to take place giving rise to the
3 claims in this Complaint as to which their marital community is fully liable. James A.
4 Barton and Jane Doe Barton are owners of Barton Dynamics, LLC and were at all
5 relevant times Plaintiff's employers as defined by the FLSA, 29 U.S.C. § 203(d).
6

7 12. Under the FLSA, Defendants James A. Barton and Jane Doe Barton are
8 employers. The FLSA defines "employer" as any person who acts directly or indirectly
9 in the interest of an employer in relation to an employee. At all relevant times,
10 Defendants James A. Barton and Jane Doe Barton had the authority to hire and fire
11 employees, supervised and controlled work schedules or the conditions of employment,
12 determined the rate and method of payment, and maintained employment records in
13 connection with Plaintiff's employment with Defendants. As persons who acted in the
14 interest of Defendant Barton Dynamics, LLC in relation to the company's employees,
15 Defendants James A. Barton and Jane Doe Barton are subject to individual liability under
16 the FLSA.
17

18 13. Plaintiff is further informed, believes, and therefore alleges that each of the
19 Defendants herein gave consent to, ratified, and authorized the acts of all other
20 Defendants, as alleged herein.
21

22 14. Defendants, and each of them, are sued in both their individual and
23 corporate capacities.
24

25 15. Defendants are jointly and severally liable for the injuries and damages
26 sustained by Plaintiff.
27

1 16. At all relevant times, Plaintiff was an “employee” of Defendants as defined
2 by the FLSA, 29 U.S.C. § 201, *et seq.*

3 17. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
4 Defendants.

5 18. At all relevant times, Defendants were and continue to be “employers” as
6 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

7 19. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
8 Defendants.

9 20. At all relevant times, Plaintiff was an “employee” of Defendants as defined
10 by A.R.S. § 23-362.

11 21. At all relevant times, Defendants were and continue to be an “employer” of
12 Plaintiff as defined by A.R.S. § 23-362.

13 22. Defendants individually and/or through an enterprise or agent, directed and
14 exercised control over Plaintiff’s work and wages at all relevant times.

15 23. Plaintiff, in his work for Defendants, was employed by an enterprise
16 engaged in commerce that had annual gross sales of at least \$500,000.

17 24. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
18 commerce or the production of goods for commerce.

19 25. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
20 interstate commerce.

21 26. Plaintiff, in his work for Defendants, regularly handled goods produced or
22 transported in interstate commerce.

FACTUAL ALLEGATIONS

1 27. Defendants own and/or operate as Big AZ Tents & Events, an enterprise
2 3 doing business in Maricopa County, Arizona.

4 28. Plaintiff was hired by Defendants in approximately 2010.

5 29. At all relevant times, Plaintiff worked for Defendants through
6 7 approximately November 17, 2021.

8 30. At all relevant times, in his work for Defendant, Plaintiff worked as a
9 10 laborer for Defendants.

11 31. Defendants, in their sole discretion, paid Plaintiff approximately \$20 per
12 13 hour.

14 32. Defendant classified Plaintiff as W-2 employee.

15 33. During his final two workweeks with Defendants, Plaintiff worked
16 17 approximately 60 hours.

18 34. Rather than pay Plaintiff his final paycheck, Defendants terminated
19 20 Plaintiff's employment for allegedly causing damage to a company vehicle, and kept
21 22 Plaintiff's final paycheck to offset the costs of the alleged damages.

23 35. In doing so, Defendants failed to compensate Plaintiff any wages
24 25 whatsoever for the final two workweeks of his employment with Defendants.

26 36. Therefore, for the final two workweeks that Plaintiff worked for
27 28 Defendants, Defendants paid Plaintiff no wages whatsoever.

29 37. To date, Defendant has still paid no wages whatsoever to Plaintiff for such
30 31 hours worked.

1 38. As a result of not having paid any wage whatsoever to Plaintiff during his
2 final two workweeks with Defendants, Defendants failed to pay the applicable minimum
3 wage to Plaintiff.

4 39. As a result of Defendants' willful failure to compensate Plaintiff any wage
5 whatsoever for such hours worked, Defendant violated 29 U.S.C. § 206(a).

6 40. As a result of Defendants' willful failure to compensate Plaintiff any wage
7 whatsoever for such hours worked, Defendant violated the AMWA, A.R.S. § 23-363.

8 41. As a result of Defendants' willful failure to compensate Plaintiff any wage
9 whatsoever for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

10 42. Plaintiff was a non-exempt employee.

11 43. Defendants knew that – or acted with reckless disregard as to whether –
12 their refusal or failure to properly compensate Plaintiff his final paycheck would violate
13 federal and state law, and Defendants were aware of the FLSA minimum wage and
14 overtime requirements during Plaintiff's employment. As such, Defendants' conduct
15 constitutes a willful violation of the FLSA and the AMWA.

16 44. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
17 of his rights under the FLSA.

18 45. Plaintiff is a covered employee within the meaning of the FLSA.

19 46. Defendants individually and/or through an enterprise or agent, directed and
20 exercised control over Plaintiff's work and wages at all relevant times.

21 47. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
22 from Defendants compensation for unpaid minimum wages, an additional amount equal

amount as liquidated damages, interest, and reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

48. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover from Defendant compensation for unpaid wages, an additional amount equal to twice the unpaid minimum wages as liquidated damages, interest, and reasonable attorney's fees and costs of this action under A.R.S § 23-363.

49. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover from Defendants compensation for his unpaid wages at an hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon, and his costs incurred under A.R.S. § 23-355.

COUNT ONE: FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE

50. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

51. As a result of not paying Plaintiff any wage whatsoever for the final two workweeks of his employment, Defendants willfully failed or refused to pay Plaintiff the FLSA-mandated minimum wage.

52. Defendants' practice of willfully failing or refusing to pay Plaintiff at the required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

53. Plaintiff is therefore entitled to compensation for the full applicable minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

WHEREFORE, Plaintiff, Shayne Smith, respectfully requests that this Court grant the following relief in Plaintiff's favor, and against Defendants:

- A. For the Court to declare and find that the Defendants committed one of more of the following acts:
 - i. Violated minimum wage provisions of the FLSA, 29 U.S.C. § 206(a), by failing to pay proper minimum wages;
 - ii. Willfully violated minimum wage provisions of the FLSA, 29 U.S.C. § 206(a) by willfully failing to pay proper minimum wages;
- B. For the Court to award Plaintiff's unpaid minimum wage damages, to be determined at trial;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest;
- E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth herein;
- F. Such other relief as this Court shall deem just and proper.

COUNT TWO: ARIZONA MINIMUM WAGE ACT FAILURE TO PAY MINIMUM WAGE

24 54. Plaintiff realleges and incorporates by reference all allegations in all
25 preceding paragraphs.

1 55. As a result of not paying Plaintiff any wage whatsoever for the final two
2 workweeks of his employment, Defendants willfully failed or refused to pay Plaintiff the
3 Arizona minimum wage.

4 56. Defendants' practice of willfully failing or refusing to pay Plaintiff at the
5 required minimum wage rate violated the AMWA, 23-363.

6 57. Plaintiff is therefore entitled to compensation for the full applicable
7 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
8 twice the underpaid wages as liquidated damages, together with interest, reasonable
9 attorney's fees, and costs.

10 **WHEREFORE**, Plaintiff, Shayne Smith, respectfully requests that this Court
11 grant the following relief in Plaintiff's favor, and against Defendants:

12 A. For the Court to declare and find that the Defendants committed one of
13 more of the following acts:

14 i. Violated minimum wage provisions of the AMWA, A.R.S. § 23-
15 363, by failing to pay proper minimum wages;

16 ii. Willfully violated minimum wage provisions of the AMWA, A.R.S.
17 § 23-363 by willfully failing to pay proper minimum wages;

18 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
19 determined at trial;

20 C. For the Court to award compensatory damages, including liquidated
21 damages pursuant to A.R.S. § 23-364, to be determined at trial;

22 D. For the Court to award prejudgment and post-judgment interest;

1 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
2 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
3 herein;

4 F. Such other relief as this Court shall deem just and proper.

5 **COUNT THREE: ARIZONA WAGE ACT**
6 **FAILURE TO PAY WAGES DUE AND OWING**

7 58. Plaintiff realleges and incorporates by reference all allegations in all
8 preceding paragraphs.

9
10 59. As a result of the allegations contained herein, Defendants did not
11 compensate Plaintiff wages due and owing to him.

12 60. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

13 61. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
14 for the entire time she was employed by Defendants.

15 62. Defendants knew that – or acted with reckless disregard as to whether –
16 their refusal or failure to properly compensate Plaintiff over the course of his
17 employment would violate federal and state law, and Defendants were aware of the
18 Arizona Wage Act's requirements during Plaintiff's employment. As such, Defendants'
19 conduct constitutes a willful violation of the Arizona Wage Act.

20 63. Plaintiff is therefore entitled to compensation for his unpaid wages at an
21 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
22 wages, plus interest thereon, and his costs incurred.

WHEREFORE, Plaintiff, Shayne Smith, requests that this Court grant the following relief in Plaintiff's favor, and against Defendants:

- A. For the Court to declare and find that the Defendants violated the unpaid wage provisions of A.R.S. § 23-350, et seq., by failing to pay wages due and owing to Plaintiff;
- B. For the Court to award an amount that is treble Plaintiff's unpaid wages pursuant to A.R.S. § 23-355, in amounts to be determined at trial;
- C. For the Court to award prejudgment and post-judgment interest on any damages awarded;
- D. For the Court to award Plaintiff's reasonable attorneys' fees and costs of the action and all other causes of action set forth in this Complaint; and
- E. Such other relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 4th day of February, 2022.

BENDAU & BENDAU PLLC

By: /s/ Clifford P. Bendau, II
Clifford P. Bendau, II
Christopher J. Bendau
Attorneys for Plaintiff

VERIFICATION

Plaintiff, Shayne Smith, declares under penalty of perjury that he has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on his personal knowledge, except as to those matters stated upon information and belief, and, as to those matters, he believes them to be true.

DocuSigned by:

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Shayne Smith